IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 2639 of 1999

in

MISC.CIVIL APPLICATION No 810 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH
and
Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURENDRAKUMAR RAMESHLAL

Versus

CHANDRAKANT BABUBHAI RESHAMWALA

Appearance:

MR RV DESAI for Petitioner

MR ND NANAVATI SR COUNSEL for MR DEVANG T SHAH for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH
and
MISS JUSTICE R.M.DOSHIT

Date of decision: 14/03/2000

ORAL JUDGEMENT

By way of this petition, the petitioner has made grievance about the respondents having disobeyed the orders passed by this court on 11th October, 1999 and 26th October, 1999 in Misc. Civil Application No. 810/99 in Special Civil Application No. 5328/98. By order dated 11th October, 1999, statement of the learned counsel for the respondent was recorded. According to that statement, the petitioner came to be reinstated in service as per the Award on 25th October, 1999. Thus, there was compliance of the main part of the Award. It was also recorded that the petitioner will be paid salary on the basis of his continuity in service. The matter was then adjourned and ultimately on 26th October, 1999, the court disposed of the contempt petition bearing MCA No. 810/99 while recording the statement that the respondents would calculate the back wages and arrears under the Award and deposit the amount within two weeks from the date of the order. Upon such a deposit being made, the petitioner was at liberty to move the court in Letters Patent Appeal No. 419/99 for withdrawal of the amount. After this petition was filed, notice was issued. By order dated 1st February, 2000, Rule was issued while directing the respondents to explain the basis for calculating the amount deposited before this court pursuant to the Award of the Labour Court as confirmed by the learned Single Judge and also as per the order dated 26-10-1999 in Misc. Civil Application No. 810/99. Consequently, affidavit in reply has been filed by the respondents annexing therewith relevant statements. No affidavit in rejoinder has been filed.

We have heard the learned counsels appearing for the rival parties. It transpired during the course of their submissions that although the petitioner has made a categorical statement that no other proceedings have been undertaken by the petitioner, the petitioner has infact moved a Recovery Application before the concerned authority taking recourse to the provisions of section 33-C (1) of the Industrial Disputes Act, 1947. The respondents contended that there was no intention on their part of not complying with the Award passed by the Labour Court, but bearing in mind the fact that there was only one post of Maintenance Supervisor and retrenchment was required to be issued by giving due compensation to the petitioner, it was difficult for the respondents to decide the amount of salary with continuity of service. However, inspite of such a stand on the part of the

respondent, the effect in respect of continuity of service has been given and a sum of Rs.44,884/- was deposited in the court. This is not in dispute. That apart, Mr. N.D.Nanavati, learned counsel for the respondents submitted before this court a detailed statement showing further working of the amount payable to the petitioner according to the respondents. . The said statement is permitted to be placed on record. According to the said statement, effect has been given to various agreements which ensued subsequently, which has been the subject matter now in the Letters Patent Appeal. Mr. Nanavati fairly submitted that according to the working of the amount due as per the continuity, the respondents are still required to deposit before this court Rs.18,745-40 PS. He however submitted that within two weeks from today, the said amount would be deposited by the respondent in this court. As against this, Mr. Desai, learned counsel appearing for the petitioner contended that the petitioner's post should be equated with the post of Shri B.K.Patel, Production Supervisor who has been placed in the category of highly skilled workman. We are afraid, we can not enter into the said arena. Such a dispute with regard to equation of post or equation of category of post as between the petitioner and Shri B.K.Patel, in our considered opinion, would be out side the scope of the present petition. Besides, the petitioner has also moved an appropriate application for recovery as aforesaid, and bearing in mind all the aforesaid facts and the statement made by Mr. Nanavati that the amount of Rs. 18,745-40 PS as per the calculation set out by the respondents will be deposited in the court within two weeks from today, we are unable to endorse the submission of Mr. Desai that there is willful disobedience on the part of the respondents. Keeping the disputes between the parties as aforesaid open, including the dispute with regard to calculation of amount, and recording the statement of Mr. Nanavati that within two weeks from today, a sum of Rs.18,745-40 PS will be deposited, we dismiss this petition. It will, however, be open to the petitioner to move the Letters Patent Bench for withdrawal of the amount as observed by this court in its order dated 26th October, 1999. Rule is accordingly discharged.

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JOSHI